after the death of the donor. He bases his contention on *Re Rose* (1949).[2] The facts of that case were these. A transfer of shares by way of gifts was duly executed in accordance with the company's regulations and handed over to the transferee with the share certificates. The company refused, during the lifetime of the transferor, to register the transfer but did so after his death. It was held by Jenkins J., that the gift was perfected at the date of the transfer since the donor had then done everything that was necessary to be done by him to transfer the shares. *Re Fry*,[1] was distinguished on the ground that in that case the donor had not done all in his power, according to the nature of the property given, to vest the legal property in the donee, the flaw in the transaction being the donor's failure to obtain the necessary consent of the Treasury to the transfer of shares. Jenkins J., distinguished *Milroy* v. *Lord*,[3] on the same ground, adding that the imperfection was due to the fact that the wrong form of transfer was used for the purpose of transferring certain bank shares.

Counsel for the defendant also relies on *Re Rose* (1952).[4] In that case the facts were that transfers of shares in proper form were duly executed and handed over with the share certificates to the transferees: the transfers were presented sufficiently long before the donor's death for the gifts, if then completed, to have escaped liability for estate duty, but were not registered until later. It was held by the Court of Appeal that the gifts were perfected at the date of the transfer since the donor had then done everything that was necessary to be done by him to transfer the shares. This, as the Court of Appeal hinted, in effect modifies the effect of *Milroy* v. *Lord*, as previously understood, by recognizing that in some circumstances a purported transfer by assignment may take effect by way of trust, for pending registration the donor presumably does become a trustee for the donee.

It is clear from the two cases of *Re Rose* that as between the donor and donee the equitable ownership in the shares passes as soon as the donor has done all that has to be done by him. This normally involves handing over an executed transfer and the share certificate. I take the view, therefore, that the proposition contended for by counsel for the defendant is too wide. This does not, however, affect my answer to the first question, which is as follows. The gifts of the shares by the intestate to Lee Seng Kee and Lee Seng Chin under and by virtue of the transfers executed by the intestate on the 28th June, 1946, were not incomplete at the date of death in so far as no approval for the transfers was obtained from the Controller of Finance under the Finance Regulations, 1946, before the date of death of the intestate or before the date of execution of the transfers.

I pass on to the second question, which is worded thus:

"In the event of the answer to question (1) being in the affirmative, did the defendant have any lawful right to confirm the gifts by transferring the shares to Lee Seng Kee and Lee Seng Chin?"

As I have answered the first question in the negative, the second question does not arise. I infer, however, from the wording of the second question that, in the event of my answer to the first question being in the negative, the parties are agreed that the defendant did have a lawful right to confirm the gifts by transferring the shares to Lee Seng Kee and Lee Seng Chin.

That brings me to the last question which is:

"Did the said shares form part of the residuary estate of the intestate as at the date of death of the intestate?"

As the point taken by the plaintiffs has been decided against them, and as no further point has been raised by them, I hold, on the evidence before me, that the gifts of the shares were complete at the date of the death of the intestate by reason of the retrospective operation of the Controller's permission. It follows, therefore, that the shares did not form part of the estate of the intestate undisposed of at the date of his death.

I order that the costs of both parties be taxed on the higher scale as between solicitor and client and paid out of the estate of the intestate.

Order accordingly.

Solicitors: *Laycock & Ong; Eber & Tan.*

AMAR SINGH v. CHIN KIEW

[C.A. (Thomson C.J., Hill & Good JJ. A.) February 10, 1960]

[K. L. — F.M. Civil Appeal No. 33 of 1959]

Damages — Negligence — Fatal Accident — Loss of expectation of life — Assessment of damages for loss of support to family of deceased — Civil Law Ordinance 1956, s.7.

Costs — Unnecessary matter included in appeal record.

The fixation of damages is so largely a matter of opinion or of impression that differences of calculation or assessment are to be expected. It is, to some extent an exercise of judicial discretion. The Court of Appeal will not therefore give preference to their own figure simply because they disagree with the figure arrived at by the trial Judge; they will only interfere if they are satisfied that the Judge has acted on a wrong principle of law or has misapprehended the facts, or has, for those or other reasons made a wholly erroneous estimate of the damage suffered.

Although the trial Judge may have failed to make allowance for some factors, so long as the figure arrived at will fairly compensate the family of the deceased it ought to stand.

Observations or costs of unnecessary matter included in appeal record, p. 79 letter I.

Cases referred to:—

(1) *Davies* v. *Powell Duffryn Associated Collieries, Ltd.* [1942] A.C. 601.
(2) *Heatley* v. *Steel Co. of Wales, Ltd.* [1953] 1 All E.R. 489, 490.
(3) *Panicker* v. *Chwee May Kwong* [1958] M.L.J. 136.
(4) *Scott* v. *Musial* [1959] 3 W.L.R. 437, 441.
(5) *Nam Thiam Siew* v. *Chuang Wai Lan* [1959] M.L.J. 126.

COURT OF APPEAL.

S. D. K. Peddie for the appellant.

Kam Woon Wah for the respondent.

Cur. Adv. Vult.

Thomson C.J.: This is an appeal from a judgment of Ismail Khan J., whereby he awarded $21,500 damages to the widow and the administratrix of the estate of one Ng Ah Thong who died on 26th March, 1956, as a result of injuries which he received in consequence of being run down by a motor lorry belonging to the present appellant and driven by one Ali bin Mohamed Kassim. The plaintiff alleged that at the time of the accident the lorry was being driven negligently by Ali who was the appellant's servant and who was driving the lorry in the course of his employment. She sued Ali and the appellant as administratrix for damage to the deceased consisting in loss of expectation of life and for herself and the children of the deceased for loss of support under the Civil Law Enactment.

In the event the trial Judge found that the appellant's lorry was being driven negligently by the first defendant who was at all material times the appellant's servant or agent. He awarded the plaintiff as administratrix $3,500 for loss of expectation of life on the part of the deceased and he awarded $18,000 for loss of support on the part of herself and the children of the deceased. For some reason, which is not clear on the record, he awarded nothing for funeral expenses which must in fact have been incurred although the very modest amount of $500 was claimed in this connection.

Against so much of that decision as relates to the quantum of damages the appellant has now appealed.

The grounds of appeal are that in view of the amount awarded for loss of support the trial Judge was wrong in awarding $3,500 for loss of expectation of life and, although this is really putting the matter in the alternative, that the damages awarded for loss of support were excessive.

It is well-settled law that in cases of this sort damages recovered for loss of expectation of life must be taken into account in assessing damages for loss of support (see *Davies* v. *Powell Duffryn Associated Collieries, Ltd.* [1]). It is quite clear from the trial Judge's judgment that this course was followed in the present case, but as counsel for the appellant seemed to attach great importance to the fact that he had not said so in terms we addressed a communication to him. He has now replied that in assessing the damages for loss of support he did in fact take into account the $3,500 which he proposed to award for loss of expectation of life.

In other words the trial Judge assessed the total value of the support lost at $21,500 and the questions, therefore, we have to decide are whether he was wrong, and, if he was wrong, whether he was so wrong as to justify this Court in interfering.

It is not altogether clear what the trial Judge did and did not take into account in arriving at the figure of $21,500, although it is only fair to point out that the evidence on which any assessment of damages could be based was extremely meagre. He accepted the plaintiff's evidence that the deceased was contributing the whole of his earnings which were said to be between $160 and $200 a month towards the maintenance of his wife and six children whose ages ranged from 14 to 2 years, the eldest being a mentally-unbalanced daughter with hardly any prospect of getting married or earning an independent living. The deceased was a rubber tapper, age about 41, and for the purpose of calculating the damages the Judge assumed that his expectation of working as distinct from natural life would be about 19 years. As was said by Lord Goddard C.J., in the case of *Heatley* v. *Steel Co. of Wales, Ltd.* [2] what figure a Judge can reasonably take in this connection is "entirely an arbitrary matter of speculation".

What was urged upon us in the present case was that the Judge had overlooked the consideration that in the nature of things the deceased could not have been contributing the whole of his earnings towards the maintenance of his wife and children and that at least some part of his earnings must have been devoted to his own maintenance.

Here we were referred to the decision of the Singapore Court of Appeal (of which I myself was a member) in the case of *Panicker* v. *Chwee May Kwong* [3]. In that case the Court reduced the damages awarded by the trial Judge on the basis that he should have deducted $50 a month from the estimated earnings of the deceased in respect of what ought to have been assumed to have been devoted to his own upkeep and maintenance. In that case, however, the deceased was of the same age as the deceased in the present case and the trial Judge had assumed an expectation of natural life of 26 years which for the purpose of calculating the damages he had only reduced to 24 years to allow for the various contingencies which must be taken into account in a case of this nature.

In the present case it may well be that *per incuriam* the learned trial Judge has omitted to make any allowance for what the deceased spent upon himself. On the other hand whatever view he took of the deceased's expectation of natural life he reduced that figure to the very low figure of 19 years for the purpose of calculating the damages. Moreover, it would seem that he took a very cautious view of the widow's evidence as to the deceased's earnings. Assuming a rate of interest of 5%, $21,500 is 19 years' purchase of $150 a month, whereas the widow stated, and she was not contradicted, that the deceased earned from $160 to $200 a month.

The latest statement of how and when a Court of Appeal will interfere in a case of this nature is contained in the following passage from the judgment of Morris L.J., in the case of *Scott* v. *Musial*[4]:—

"Where there is an appeal from the decision of a Judge sitting alone, the appeal is by way of rehearing. The rehearing applies to the issue of damages as well as to other issues. But it is recognised that the fixation of damages is so largely a matter of opinion or of impression that differences of calculation or assessment are to be expected. There is, to some extent, an exercise of judicial discretion. It is for this reason that, if three judges of the Court of Appeal consider that the amount of general damages that they would have awarded would have been a figure different from that decided by the trial Judge, they will not, for that reason alone, give preference to their own figure; they will only do so if satisfied that the Judge has acted on a wrong principle of law or has misapprehended the facts, or has, for those or other reasons, made a wholly erroneous estimate of the damage suffered:"

In the present case I agree that the trial Judge may have "misapprehended the facts" in the sense that *ex facie* he has failed to make allowance for a certain amount of the deceased's earnings going towards his own maintenance. I am not, however, prepared to say that for that or any other reason he has "made a wholly erroneous estimate of the damage suffered". He may have failed to make any allowance for the one factor that has been mentioned. On the other hand he may well have made an excessive allowance for other factors and so have been unduly cautious in arriving at the number of years purchase he was going to take. Again, he may have been unduly cautious in the view he took of the total amount of the deceased's earnings.

As was said by Lord Goddard in the case of *Heatley* v. *Steel Co. of Wales, Ltd., supra*:—

"The court has, in the best way it can, to find a sum of money which it thinks will fairly compensate the family. One Judge may arrive at it in one way and another Judge in another."

This appeal is by way of rehearing and so, within the limits imposed by a number of authorities of which the latest is *Scott* v. *Musial, supra*, we have to apply our minds to the whole question of damages. Applying my own mind to that question and giving the matter the best consideration I can I am unable to disagree with the trial Judge's conclusion that a sum of $21,500 will compensate the family fairly but not more than fairly for what it has lost Nor do I see any reason to quarrel with the trial Judge's figure of $3,500 as damages for loss of expectation of life though as that falls to be deducted from the $21,500 the point is largely academic.

I would accordingly dismiss the appeal with costs.

Before departing from the case I would like to comment as in the case of *Nam Thiam Siew* v. *Chuang Wai Lan*[5] on the amount of costs that have been thrown away in preparing the record of appeal. Exactly half the record consists of a so-called agreed bundle of documents which contains nothing except the record of some Police Court proceedings where the first defendant to the action, who is not even a party to this appeal, was prosecuted in the Magistrate's Court at Kajang and a long correspondence among the solicitors in the case. There is not a word in all this mass of paper which has any bearing on the subject matter of the appeal which was the quantum of damages.

Hill J.A.: I have had the advantage of reading the Judgment of the learned Chief Justice. I am in agreement with it and have nothing to add.

Good J.A.: I agree with My Lord's Judgment. I also am of the opinion that the sum of $21,500, however it may have been arrived at, represents fair compensation for the family of the deceased in all the circumstances.

I would therefore dismiss the appeal with costs.

Appeal dismissed.

Solicitors: *Bannon & Bailey*; *Kam Woon Wah.*

MITRA & CO. v. THEVAR & ANOR.

[C. A. (Thomson C.J., Hill and Good JJ. A.) February 27, 1960]

[Johore Bahru — F.M. Civil Appeal No. 26 of 1959]

Practice and Procedure — Costs — Liability of Solicitor to pay costs personally — Jurisdiction of Court under R.S.C. 1957, O.65 r.11.

O.65 r.11 is substantially, although not in every respect, the same as the corresponding English rule. In considering whether the misconduct or default of a solicitor is such as to attract the provisions of O. 65 r. 11 the true test is that laid down by the House of Lords in *Myers* v. *Elman* as explained by Sachs J. in *Edwards* v. *Edwards*. The mere fact that the litigation fails is no reason for invoking the jurisdiction of the Court to call upon the solicitor to pay costs personally; nor is an error of judgment; nor even is the mere fact that an error is of an order which constitutes or is equivalent to negligence. There must be something that amounts to a serious dereliction of duty or gross negligence. Thus unreasonably to initiate or continue an action when it has no or substantially no chance of success may constitute conduct enabling the Court to exercise the above jurisdiction.

Cases referred to:—

(1) *Myers* v. *Elman* [1940] A.C. 282.
(2) *Edwards* v. *Edwards* [1958] P. 235, 247.
(3) *Bishopgate Motor Finance Corpn. Ltd.* v. *Transport Brakes Ltd.* [1949] 1 K.B. 322, 338.

COURT OF APPEAL.

A. N. Mitra for the appellant.

1st respondent in person.

R. Murugason for the 2nd respondent.

Thomson C.J.: This is an appeal by a solicitor against an Order made against him by Hepworth J., under R.S.C., Order 65, rule 11, at the conclusion of the trial of the case of